

RECEIVED

NOV 30 1992

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

ORIGINAL
FILE

In the Matter of)
)
Amendment of Part 90 of the)
Commission's Rules Governing)
Extended Implementation Periods)

PR Docket No. 92-210
RM-7974

To: The Commission

Comments of PowerSpectrum, Inc.

PowerSpectrum, Inc. ("PSI"), by its attorneys, hereby submits its Comments responsive to the Notice of Proposed Rule Making ("NPRM") initiated by the Federal Communications Commission ("FCC" or "Commission") in the above referenced matter which seeks to amend the rules governing extended implementation schedules for 800 MHz and 900 MHz private land mobile radio systems.^{1/}

I. Introduction

The current regulations governing extended implementation schedules allow applicants for frequencies in the Public Safety, Industrial/Land Transportation, Business and General Categories to request an additional period of time to construct their systems and place them in operation. Applicants for specialized mobile radio ("SMR") systems are not permitted, by rule, to secure authority to construct systems over an extended

^{1/} Notice of Proposed Rule Making, PR Docket 92-10, Released October 13, 1992 (FCC 92-429). The deadlines for the submission of Comments and Reply Comments were extended by Order, Chief, Land Mobile and Microwave Division, Private Radio Bureau, Released November 4, 1992 (DA 92-1520).

No. of Copies rec'd
List A B C D E

0 + 5

period. Moreover, the regulations specify four narrow categories which will justify a request for an extended implementation schedule: (1) the proposed system will serve a large fleet and will involve a multi-year cycle for planning, approval, funding and construction; (2) the proposed system will require longer than specified in the regulations because of its purpose, size or complexity; (3) the proposed system is to be part of a coordinated or integrated area-wide system that will require more than a year to plan, approve, fund, and construct; or (4) the applicant is a local governmental agency and demonstrates that it is required to by law to follow a multi-year cycle for the planning, approval, funding and purchasing of the proposed system.

These extended implementation regulations have proven to be too limited for the private land mobile industry. Accordingly, the Commission has proposed the following changes to the rules: (1) extension of the rule's applicability to SMR systems; (2) lengthening the extended implementation period from three to five years; (3) eliminating the fleet size requirement for qualification for an extended implementation schedule; and (4) eliminating the annual reporting requirement.

PSI is a subsidiary of Geotek Industries, Inc. ("Geotek"), a U.S. public company. Geotek is a telecommunications company specializing in the design, manufacture and sale of communications and commercial sound products. PSI has applied for and received authorizations, by assignment, for many 900 MHz SMR systems throughout the country. There are several other applications pending with the Commission. Additionally, PSI submitted a Rule Waiver Request to enable it to implement a multiple site, digital SMR system using 900 MHz channels. PSI's waiver request asks for much of

the relief proposed as amendments to the regulations in this proceeding. Accordingly, PSI will be significantly affected by the Commission's decision in this matter. PSI is pleased, therefore, to have the opportunity to submit the following comments supporting the proposed rule changes.

II. Comments

The Commission proposes amendment of the regulations so that SMR applicants, as well as those entities in other service categories, may request an extended implementation schedule. The FCC's action is based, in part, on the numerous requests it has received from SMR applicants to implement technically innovative, wide area systems. The FCC correctly notes that because of the complexity and expense of these systems, applicants are unable to place the system in operation within the one year time frame otherwise specified in the rules.

Because PSI is among the SMR applicants that has requested an extended implementation schedule, it strongly supports the Commission's proposal to expand the applicability of the regulations to SMRs. Recent submissions have demonstrated that SMR operators plan systems that are far more expansive than the traditional single site facility of the past. These systems, which will provide high quality digital voice and data services to the public, necessarily require more than one year to construct for several reasons.

First, the size of many of the systems require the dedication of human resources which cannot be expended in one year. PSI's system will cover at least 30 separate markets. Even if it pursues an aggressive construction schedule of two markets per

month, the full system cannot be built within two years. Second, like PSI, many of these advanced SMR systems will employ technology still under development. Because a portion of the time required for system implementation will be devoted to research and development, construction is not feasible within the current one year time frame.^{2/} The Commission has already recognized that these factors apply to SMR systems as well as those operated by other categories of licensees.^{3/} Accordingly, application of the extended implementation provisions to SMRs would be consistent with Commission policy.

The Commission also proposes to extend, from three to five years, the implementation time permitted. PSI agrees with this proposal for the same reasons it supports application of the extended implementation provisions to SMRs in general. While some systems can be constructed in a three year period, others, particularly those involving the implementation of new technology, require a longer period of time for construction. Moreover, Commission action to extend the implementation schedule to five years is consistent with waivers granted to SMR operators to construct wide-area

^{2/} The Commission should permit licensees greater flexibility when they intend to implement advanced technology not yet available. The proposed regulations do not state the parameters of an acceptable extended implementation schedule. However, in its Comments in the Docket No. 89-553 proceeding, PSI suggested that the Commission recognize a difference in the time permitted for the construction of nationwide systems between those entities proposing to use existing technology and those applicants intending to employ technology that is verifiably under development. PSI suggests that the same rationale should apply to the Commission's consideration of extended implementation requests.

^{3/} See, e.g. *In re Fleet Call, Inc.* 6 FCC Rcd 1533 (1991); *American Mobile Data Communications, Inc.*, 4 FCC Rcd 3802 (1989).

systems.^{4/} PSI expects that future wide-area SMR systems will necessitate the same period of time for construction.

PSI agrees with the other amendments proposed by the Commission to the regulations governing extended implementation schedules. First, it agrees that there is little or no correlation between the number of mobile units operating on an applicant's system and the need for extended implementation. The difficulty in implementing a system within the otherwise required time frame is based generally on the complexity and scope of the system, not a particular number of mobile units anticipated for use. Accordingly, it supports modification of the regulation requiring an applicant for an extended implementation schedule to demonstrate use of 200 units. In addition, PSI supports the Commission's proposals to: (1) expand to any entity, as opposed to a government entity, extended implementation eligibility if they are required by law to follow a multi-year planning, approval, funding and purchasing cycle; (2) eliminate the current annual reporting requirement.

Nevertheless, PSI questions the FCC's proposal that would more clearly indicate that licensees of trunked systems authorized pursuant to an extended implementation schedule are subject to the same loading and channel recapture provisions as trunked licensees who do not operate pursuant to an extended implementation schedule. The regulations that permit channel recapture will not apply to systems authorized after June 1, 1993.^{5/} Moreover, the Commission has just modified its loading regulations to

^{4/} See In re Fleet Call, 6 FCC Rcd 1533 (1991).

^{5/} 47 C.F.R. 90.631(b)

recognize that mobile units may be counted more than once for loading purposes if they operate on more than one SMR system.^{6/} Because of the number of wide area SMR system applications now under consideration which request extended implementation schedules, PSI doubts whether it is a valuable expenditure of Commission resources to engage in channel recovery actions, if any of these systems are licensed prior to June 1, 1993 if the rules are otherwise modified before that time to permit, by rule, extended implementation of wide area SMR systems.

III. Conclusions

PSI supports the FCC's efforts to modify the regulations concerning extended implementation schedules. SMR operators have provided significant justification for using more than the one year period established in the rules for the construction and implementation of complex, wide area systems. PSI agrees that the permissible time for implementing systems of this nature should generally be set at a maximum of five years. PSI does not agree that the Commission should impose channel recovery sanctions on SMR systems authorized under an extended implementation schedule in light of changes in the FCC's interpretation of loading standards and the enforcement of those standards beginning in June, 1993.

^{6/} **Report and Order**, Amendment of Part 90 of the Commission's Rules to Eliminate Separate Licensing of End Users or Specialized Mobile Radio Systems, P.R. Docket No. 92-79, released August 31, 1992 (FCC 92-359).

WHEREFORE, THE PREMISES CONSIDERED, PowerSpectrum, Inc. hereby submits its Comments in this proceeding and urges the Commission to act in a fashion consistent with the views expressed herein.

Respectfully Submitted

PowerSpectrum, Inc.

By: 
Russell H. Fox

Gardner, Carton & Douglas
1301 K Street, N.W.
Suite 900 East Tower
Washington, D.C. 20005
202-408-7100

Its Attorneys

Dated: November 30, 1992

F:\RHF\PLD\42675.1